

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 Heller Ehrman LLP,

12 No. C 14-4002 CRB

13 Appellant,

**14 ORDER AFFIRMING THE
BANKRUPTCY COURT**

15 v.

16 K. William Neuman,

17 Appellee.

18 Appellant Heller Ehrman LLP appeals the Bankruptcy Court's order allowing
19 Appellee K. William Neuman's Claim 719, which asserts that Heller Ehrman owes Neuman
20 \$1,161,066.43 under an employment contract that Neuman entered into with the LLP. See
21 Bankruptcy Ct. Order (dkt. 1-3) at 1 of 3.¹ The Bankruptcy Court concluded that (1)
22 Neuman was not a shareholder at the time of the firm's dissolution, so he had a right to
23 compensation as an employee, (2) the firm's dissolution did not prevent Neuman from
24 satisfying his obligations under the contract, and (3) the claims arising from Neuman's
25 employment contract with the LLP were not subordinated in the LLP's Plans of Dissolution
26 and Liquidation. See Bankruptcy Ct. Oral Ruling ("Oral Ruling") (dkt. 10-1) at 282–294 of
27 295. For the following reasons, this Court AFFIRMS.

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¹ Given that the parties here combine dozens of separately paginated exhibits into single CM/ECF filings, this Court cites to the CM/ECF page numbers provided at the top of the filings, rather than to the page numbers of each individual exhibit.

1 **I. Factual Background**

2 The parties have stipulated to many of the facts and exhibits underlying this dispute,
3 and this factual background draws in large part from those stipulations. See Parties'
4 Stipulated Facts ("Stipulated Facts") (dkt. 10-1) at 5 of 295. The Bankruptcy Court also held
5 a bench trial and made a number of factual findings as discussed below. See Oral Ruling
6 (dkt. 10-1) at 282–294 of 295.

7 **A. The LLP's Organizational Structure**

8 Heller Ehrman LLP (the "LLP") was an international law firm that had been in
9 business for 130 years prior to its dissolution and bankruptcy. Stipulated Facts ¶ 6.
10 Headquartered in San Francisco, California, Heller grew to include more than 730 attorneys
11 across the United States, Europe, and Asia. Id. The LLP was originally a California general
12 partnership named Heller, Ehrman, White & McAuliffe; its original managing partner was
13 the California professional corporation ("PC") Heller, Ehrman, White & McAuliffe, PC. Id.
14 ¶ 7. Multiple local PCs, each operating in different regions of the United States and later the
15 world, served as partners of the LLP. See id. ¶ 9.

16 A Partnership Agreement governed the LLP. Id. ¶ 8. The Partnership Agreement
17 provided that a set of "Basic Documents" would control, among other things, the LLP's
18 relationship with its partner PCs and shareholders. See id. ¶ 11. These Basic Documents
19 consisted of "the Employment Agreement, the Shareholders Agreement, the Partnership
20 Agreement and the Retirement System." Id. ¶ 11.

21 **B. Categories of LLP Employees**

22 The stipulated facts, exhibits, and findings of the Bankruptcy Court all indicate that
23 the LLP had two categories of employees. First, the firm had shareholders—comparable to
24 "equity partners" at traditional law firms—who received variable compensation tied to the
25 firm's profits. See Employment Agreement (dkt. 10-2) at 7 of 162. Shareholders were
26 employed by the regional PCs that served as the LLP's partners. The Basic Documents
27 provided that shareholders would receive a percentage of the firm's yearly profits determined
28 based on a variable "portion of the Company's draw . . . which is attributable to the

1 Employee" as determined by the firm. See Employment Agreement (dkt. 10-2) at 59, 62–63
2 of 162. The Basic Documents did not provide for any other shareholder compensation
3 model; variable, percentage-based compensation was the "Exclusive Basis for [Shareholder]
4 Compensation," and shareholders' "compensation shall be determined only as provided in
5 this Agreement." Id. at 62 of 162. The Employment Agreement further provided that when
6 a shareholder left the PC, the firm would repurchase the shareholder's "preferred stock," or
7 in other words, refund the shareholder's capital account balance. See id. at 63 of 162.
8 Additionally, the Employment Agreement expressly prohibited the amendment of its terms as
9 to some but not all of the LLP's shareholders, providing that "this Agreement may not be
10 amended in any respect unless all other Employment Agreements to which the Company is a
11 party and which are then in effect are amended in identical respect." See Appellee's Full
12 Copy of Employment Agreement (dkt. 13-3) at 14 of 16.

13 Second, the LLP had fixed-income employees. See Trial Transcript (dkt. 10-1) at
14 167–168 of 295. This category of employees included staff, retired shareholders, and
15 associates, all of whom were employed by the LLP and paid a salary, see id., unlike
16 shareholders, who were compensated with a percentage of the firm's profits and who were
17 members of regional PCs, see Employment Agreement (dkt. 10-2) at 7 of 162. Some former
18 shareholders who had retired or who had been asked to give up their right to share in a
19 percentage of the firm's profits nonetheless retained the "shareholder" or "retired
20 shareholder" title in addition to several non-economic benefits that allowed them to hold
21 themselves out as shareholders. See Stipulated Facts ¶ 35; Trial Transcript (dkt. 10-1) at
22 84–85 of 295; Oral Ruling at 287 of 295. These benefits might have included the former
23 shareholder's title, preference in office selection, and priority receipt of baseball tickets. Id.

24 **C. Neuman's Employment at Heller Ehrman**

25 Neuman joined the LLP as an associate in 1976, became a shareholder in the 1980s,
26 served as the head of the firm's Real Estate Practice Group, and eventually became the firm's
27 Vice President – Real Estate Operations. Stipulated Facts ¶ 5. In addition to maintaining his
28 practice, he secured new leases and supervised construction to accommodate the firm's

1 international growth. See Stipulated Facts ¶ 5. Eventually, Neuman had to devote so much
2 time to the firm's internal real estate needs that his billable hours dropped; he was also
3 diagnosed with cancer and required treatment around 2001, although he continued to work
4 during and after his illness. See Trial Transcript (dkt. 10-1) at 57–58, 81 of 295.

5 In early 2007, a member of the firm's Compensation Committee approached Neuman
6 to propose that he move from variable, profit-sharing compensation to fixed-income
7 compensation governed by a four year employment contract. See Stipulated Facts ¶ 30.
8 After some negotiation over terms, Neuman and the firm agreed that he would move to a
9 fixed-income contract. See id. The contract expressly stated that it was an agreement
10 between Neuman and Heller Ehrman LLP, not one of the firm's regional PCs, and it was
11 signed by the LLP's managing shareholder—Robert Hubbell—rather than by an officer of a
12 regional PC. See Neuman Employment Contract (dkt. 10-2) at 109–110 of 162.

13 **D. Details of Neuman's 2007 Employment Contract**

14 Neuman's contract stated that he would become a "fixed income shareholder." See
15 Neuman Employment Contract (dkt. 10-2) at 109 of 162. The contract noted that he would
16 not appear on the variable compensation list published each year by the Compensation
17 Committee. Id. Additionally, he would not be required to make capital contributions to the
18 firm. Id. The contract further provided that Neuman's annual compensation would be fixed
19 by the Compensation Committee at \$775,000, although that amount would be reviewed
20 annually with the requirement that Neuman provide at least 1,550 billable hours and at least
21 2,400 total hours of service to the firm each year. Id. The "term of this fixed income
22 arrangement" was four years. Id.

23 Under the contract, Neuman would retain eligibility for the non-profit sharing benefits
24 associated with shareholder status: he could attend retreats and real estate practice group
25 meetings, receive financial information, retain some voting rights, and continue to receive
26 retirement benefits. See id. at 109–110 of 162. Finally, the contract provided that this
27 "signed letter will constitute the complete understanding of our agreement as to the matters
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1 covered herein. Any subsequent changes to this agreement can only be made in writing,
2 signed by you and another member of the Executive Committee” Id.

3 **E. The Contract’s Effect on Neuman’s Shareholder Status**

4 Following the adoption of Neuman’s fixed-income employment contract, his name did
5 not appear on a 2007 document reporting the allocation of profits within the firm. See
6 Stipulated Facts ¶ 31. The report stated that “[t]hose shareholders who will be paid a fixed
7 salary will be notified separately of their 2007 compensation.” Id. Neuman received his
8 fixed-income paychecks from Heller Ehrman’s California PC. See Stipulated Facts ¶¶
9 21–23. Neither the LLP nor the California PC repurchased Neuman’s preferred stock, see id.
10 ¶ 40, but later trial testimony indicated that the stock repurchase was to occur near the end of
11 Neuman’s contractual employment term as he approached retirement. See Trial Transcript
12 (dkt. 10-1) at 107–108 of 295.

13 The LLP continued to list Neuman as an active shareholder in declarations to its
14 lenders; later trial testimony indicated that this allowed the firm to convey the impression that
15 partner defections were not placing the firm at risk of breaching its loan covenants. See
16 Stipulated Facts ¶ 44; Trial Transcript (dkt. 10-1) at 185–186 of 295. Neuman was not aware
17 until 2013 of at least some of the documents on which the firm listed him as a shareholder to
18 its lenders. See Stipulated Facts ¶ 47. Furthermore, a firm document prepared for potential
19 merger partners listed the firm’s active shareholders and omitted Neuman from the list; he
20 was classified under the heading “Status: Fixed and Other.” See Trial Transcript (dkt. 10-1)
21 at 185 of 295.

22 **F. The LLP’s Bankruptcy and Plans of Liquidation and Dissolution**

23 In September 2008, Heller Ehrman’s primary lender notified the LLP that it was
24 in default on its line of credit. See Stipulated Facts ¶ 45. The LLP, with Neuman’s support,
25 voted to adopt a Plan of Dissolution in September 2008. Id. ¶¶ 50–51. In December 2008,
26 the firm filed a voluntary petition for bankruptcy relief under Chapter 11 in the Northern
27 District of California. Id. ¶ 54. In August 2010, the LLP and a group of unsecured creditors
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1 filed a joint Plan of Liquidation. Id. ¶ 55. The Bankruptcy Court confirmed the plan the next
2 month. Id. ¶ 57.

3 The Plan of Dissolution provided that “[t]here will be no return of capital to any
4 Shareholder, recently departed Shareholder, or former or retired Shareholder and no payment
5 of any kind made to former and/or retired Shareholders” until “all of the legal obligations of
6 the Firm-in-Dissolution to third party creditors are satisfied, except if permitted by the Firm’s
7 senior secured lenders,” with the exception that “Shareholders may pursue claims for
8 compensation for services rendered prior to their departure or other expenses or contractual
9 rights arising from or related to their employment.” See Plan of Dissolution (dkt. 10-3) at 43
10 of 65. Similarly, the Plan of Liquidation subordinates shareholders claims for the return of
11 capital and expressly incorporates the language from the Plan of Dissolution that there “will
12 be no return of capital” to former Shareholders, although “Shareholders may pursue claims”
13 based on “contractual rights arising from or related to their employment.” See Plan of
14 Liquidation (dkt. 10-3) at 50 of 65.

15 **G. Procedural Posture**

16 During the LLC’s bankruptcy proceedings, see In re Heller Ehrman, LLP, No.
17 3:08-bk-32514 (Bankr. N.D. Cal.), Neuman filed Claim 719, requesting \$1,161,066.43 in
18 compensation from the firm under his 2007 employment contract. See Stipulated Facts ¶¶
19 57–61. The Bankruptcy Court allowed Neuman’s Claim after a bench trial, concluding that
20 California law and the relevant contracts established that (1) Neuman was not a Heller
21 Ehrman shareholder at the time of the LLP’s dissolution, so he could claim a right to
22 compensation as an employee (2) the firm’s bankruptcy and dissolution did not prevent
23 Neuman from fulfilling his duties under the 2007 employment contract, and (3) Neuman’s
24 claims were not subordinated by the Plans of Dissolution and Liquidation. See Oral Ruling
25 (dkt. 10-1) at 282–294 of 295. The Bankruptcy Court’s express factual findings are listed in
26 the following subsection. The LLC now appeals under 28 U.S.C. § 158(a)(1), Federal Rule
27 of Bankruptcy Procedure 8001(a), and Local Bankruptcy Rule 8001 et seq.

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1 **H. The Bankruptcy Court's Findings of Fact**

2 In reaching its conclusion, the Bankruptcy Court made a number of express factual
3 findings based in part on the evidence presented at trial. First, the Bankruptcy Court found
4 that “when Mr. Neuman prepared his proposal for his salary-based compensation . . . he
5 understood that this represented a unique, one-off arrangement.” See Oral Ruling at 285 of
6 295. Second, the court found that the “2007 agreement represented the entirety of the parties’
7 agreement regarding Mr. Neuman’s employment and compensation for 2007 through 2010.”
8 Id. Third, “Mr. Neuman received a salary under the 2007 agreement and did not have an
9 attributed percentage, as that defined term was used in the various Heller documents.” Id.
10 Fourth, “Mr. Neuman believed that he was an employee of Heller LLP from and after the
11 date of the agreement or effectively for 2007 and was no longer an employee of the
12 California PC.” Id.²

13 The Bankruptcy Court also found based on the evidence presented at the bench trial
14 that Neuman’s 2007 employment letter—written on LLP letterhead and signed by the
15 managing shareholder of the LLP—was a new employment contract between Neuman and
16 the Heller Ehrman LLP. See Oral Ruling at 286 of 295. It was not a modification of
17 Neuman’s original employment agreement with the Heller Ehrman California PC that had
18 bound him during the time that he was a shareholder receiving variable income based on the
19 firm’s profits. See id.; Employment Agreement (dkt. 10-2) at 7 of 162. The Bankruptcy
20 Court further found, based on trial testimony, that fixed-income employees at Heller Ehrman
21 were employed by the LLP, and that shareholders were employed by the regional PCs. See
22 Oral Ruling at 286, 288 of 295. The court reasoned that if the firm’s management had
23 intended Neuman to continue his employment with the California PC, “then an officer of the
24 corporation would sign rather than a shareholder who happened to be the person who was the
25 managing shareholder of the entire LLP.” See id. at 286 of 295.

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28 ² The second and third of these “factual findings” appear to be mixed questions of law
and fact, and this Court will apply a de novo standard of review to them as discussed in the
following section. See Hamada v. Far E. Nat’l Bank, 291 F.3d 645, 649 (9th Cir. 2002).

II. LEGAL STANDARD

This Court reviews a bankruptcy court's findings of fact for clear error and its conclusions of law de novo. In re Int'l Fibercom, Inc., 503 F.3d 933, 940 (9th Cir. 2007). Mixed questions of law and fact are reviewed de novo. Hamada v. Far E. Nat'l Bank, 291 F.3d 645, 649 (9th Cir. 2002). This Court "reviews the bankruptcy court's interpretation and meaning of contract provisions de novo." In re W. Asbestos Co., 416 B.R. 670, 691 (N.D. Cal. 2009), aff'd sub nom. Renfrew v. Hartford Acc. & Indem. Co., 406 F. App'x 227 (9th Cir. 2010). "The determination as to whether contract language is ambiguous and whether the written contract is reasonably susceptible of a proffered meaning, is also a question of law reviewed de novo." Id. But "when the bankruptcy court uses extrinsic evidence to interpret a contract, the court reviews the findings of fact for clear error and the principles of law applied to those facts de novo." Id.

III. DISCUSSION

The parties dispute (1) whether Neuman was a shareholder or an employee at the time of the LLP's dissolution, (2) whether the LLP's dissolution prevented Neuman from fulfilling his obligations under his 2007 employment contract, and (3) whether Neuman's claim was subordinated by the Plans of Dissolution and Liquidation. For the following reasons, this Court concludes that Neuman was an employee, not a shareholder, that he fulfilled his obligations under his contract, and that his claims were not subordinated.

A. Whether Neuman was a Shareholder in Heller Ehrman LLP

The parties agree that the Claim at issue here hinges on whether, under the relevant contracts and California law, Neuman was a shareholder or an employee. See Appellant Br. (dkt. 10) at 17; Appellee's Br. (dkt. 13) at 11. "The fundamental rules of contract interpretation are based on the premise that the interpretation of a contract must give effect to the 'mutual intention' of the parties." Perez-Encinas v. AmerUs Life Ins. Co., 468 F. Supp. 2d 1127, 1133 (N.D. Cal. 2006) (citing Waller v. Truck Ins. Exchange, 900 P.2d 619, 627 (Cal. 1995). "The court must look first to the language of the contract in order to ascertain its plain meaning." Id. (citing Reserve Ins. Co. v. Pisciotta, 640 P.2d 764, 767 (Cal. 1982)).

1 The Bankruptcy Court made a factual finding that Heller Ehrman shareholders were
2 employed by regional PCs, whereas salaried employees worked for the LLP. See Oral
3 Ruling at 286 of 295; see also Trial Transcript (dkt. 10-1) at 167–168 of 295. Neuman’s
4 2007 employment contract states that he was becoming a “fixed income shareholder” of the
5 LLP, rather than a variable income shareholder of the California PC. See Neuman
6 Employment Contract (dkt. 10-2) at 109 of 162. The 2007 contract was signed by an officer
7 of the LLP, not an officer of the California PC. Id. It specified that unlike a shareholder,
8 Neuman was no longer required to make capital contributions to the firm and his name no
9 longer appeared on the firm’s annual shareholder compensation list. Id. Thus, the “plain
10 meaning” of the contract indicates that Neuman agreed to become a salaried employee of the
11 LLP, not a shareholder of the California PC. See Perez-Encinas, 468 F. Supp. 2d at 1133.

12 The LLP responds that Neuman’s 2007 contract amended only the compensation
13 terms outlined in the Basic Documents, so the remainder of the terms remained operative and
14 Neuman continued to be a shareholder as defined in those documents. See Appellant Br.
15 (dkt. 10) at 10. This argument fails under the California parol evidence rule. Under
16 California law, “[t]erms set forth in a writing intended by the parties as a final expression of
17 their agreement with respect to the terms included therein may not be contradicted by
18 evidence of a prior agreement.” Cal. Civ. Proc. Code § 1856(a) (West 2015); see Sullivan v.
19 Massachusetts Mut. Life Ins. Co., 611 F.2d 261, 264 (9th Cir. 1979). Here, Neuman’s 2007
20 contract contains an integration clause expressly stating that this “signed letter will constitute
21 the complete understanding of our agreement as to the matters covered herein. Any
22 subsequent changes to this agreement can only be made in writing, signed by you and
23 another member of the Executive Committee.” See Neuman Employment Contract (dkt. 10-
24 2) at 109 of 162. Thus, the Court concludes that California law does not permit the LLP to
25 rely on the Basic Documents to contradict the employment agreement’s “plain
26 meaning”—that Neuman became a salaried employee of the LLP. See Perez-Encinas, 468 F.
27 Supp. 2d at 1133.

28 Furthermore, “California requires that the language of the instrument [be] reasonably
susceptible of the proffered meaning before parol evidence may be introduced.” See

1 Brinderson-Newberg Joint Venture v. Pac. Erectors, Inc., 971 F.2d 272, 280 (9th Cir. 1992)
2 (citing Pacific Gas & Elec. Co. v. G. W. Thomas Drayage, 442 P.2d 641, 644 (Cal. 1968)).
3 The LLP's assertion that Neuman's 2007 employment contract amended only the Basic
4 Documents' compensation provision cannot be reconciled with the express terms of the
5 respective agreements. The Basic Documents state that variable, percentage-based
6 compensation is the "Exclusive Basis for [Shareholder] Compensation," and shareholders'
7 "compensation shall be determined only as provided in this Agreement." Employment
8 Agreement (dkt. 10-2) at 62 of 162. Neuman's 2007 employment contract, on the other
9 hand, adopts a fixed-income compensation model. See Neuman Employment Contract (dkt.
10 10-2) at 109 of 162. Additionally, the Basic Documents state that "this Agreement may not
11 be amended in any respect unless all other Employment Agreements to which the Company
12 is a party and which are then in effect are amended in identical respect." See Appellee's Full
13 Copy of Employment Agreement (dkt. 13-3) at 14 of 16. The Court thus concludes that the
14 2007 employment contract is not "reasonably susceptible" to the LLP's "proffered
15 meaning"—that the contract served as an amendment to the Basic Documents—and that
16 Neuman's fixed salary cannot be reconciled with the compensation scheme that the Basic
17 Documents provided for shareholders. See Brinderson-Newberg, 971 F.2d at 280.

18 In reply, the LLP argues that Neuman must have been a shareholder given that (1) he
19 retained some of the privileges associated with shareholder status, (2) he was listed as a
20 shareholder on some firm documentation, (3) the firm did not buy back his preferred stock,
21 and (4) he received his paychecks from the California PC, rather than the LLP with whom he
22 signed his employment contract. See Appellant Reply Br. (dkt. 14) at 3–4. To the extent the
23 LLP is arguing that the Court should interpret Neuman's contract based on the subsequent
24 "course of performance" of the parties, its argument fails because it has not demonstrated that
25 Neuman, "with knowledge of the nature of the performance and opportunity for objection to
26 it, accept[ed] the performance or acquiesce[d] in it without objection." See Employers
27 Reinsurance Co. v. Superior Court, 161 Cal. App. 4th 906, 920 (Ct. App. 2008).

28 Neuman was not aware until 2013 of at least some of the documents on which the firm
listed him as a shareholder to its lenders. See Stipulated Facts ¶ 47. To the contrary, a firm

1 document prepared for potential merger partners listed the firm's active shareholders and did
 2 not include Neuman's name; he was classified under the heading "Status: Fixed and Other."
 3 See Trial Transcript (dkt. 10-1) at 185 of 295. Additionally, the Bankruptcy Court found
 4 based on trial testimony that "Mr. Neuman believed that he was an employee of Heller LLP
 5 from and after the date of the agreement or effectively for 2007 and was no longer an
 6 employee of the California PC." See Oral Ruling at 285 of 295. Thus, even if the firm did
 7 tell banks that Neuman was a shareholder and delay the return of his preferred shares, the
 8 LLP has failed to establish that Neuman knew about the firm's conduct and "acquiesce[d] in
 9 it without objection." See Employers Reinsurance Co., 161 Cal. App. 4th at 920.³

10 Furthermore, the Court does not need to examine the parties' "course of performance"
 11 here because the "plain meaning" of the contract is clear: Neuman was a fixed-income
 12 employee of the LLP, not a shareholder compensated with a percentage of the firm's profits.
 13 See Perez-Encinas, 468 F. Supp. 2d at 1133.⁴ The LLP has not shown that the Bankruptcy
 14 Court committed "clear error" by finding that shareholders were employed by regional PCs,
 15 whereas Neuman signed his fixed-income employment contract with the LLC. See In re Int'l
 16 Fibercom, Inc., 503 F.3d 933, 940 (9th Cir. 2007); Oral Ruling at 286 of 295. The Court thus
 17 concludes that Neuman ceased to be a shareholder of the California PC and became instead a
 18 salaried employee of the LLC.

19 The LLP also argues that for Neuman to prove the two parties substituted the 2007
 20 contract for the Basic Documents, it must "clearly appear[] that the parties intended to
 21 extinguish rather than merely modify the original agreement," and here that intention does

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 23 ³ The LLP points to agreements it signed with retiring shareholders that included the repurchase
 24 of preferred stock, among other things, as examples of agreements in which a shareholder was converted
 25 to an employee. See Appellant Br. (dkt. 10) at 21. These agreements fail as "course of conduct" intent
 26 evidence because the Bankruptcy Court found that "when Mr. Neuman prepared his proposal for his
 27 salary-based compensation . . . he understood that this represented a unique, one-off
 28 arrangement." See Oral Ruling at 285 of 295; Employers Reinsurance, 161 Cal. App. 4th at 920.

⁴ The LLP also attempts to interpret the Basic Documents—specifically their voting rights and
 27 profit sharing provisions—to support an argument that Neuman's fixed salary could only be paid out
 28 of the firm's profits. See Appellant Br. (dkt. 10) at 18–20. Its argument fails because the Basic
 29 Documents cannot be reconciled with the Neuman's 2007 contract, see Brinderson-Newberg, 971
 F.2d at 280, and the 2007 contract does not specify that Neuman's fixed salary must be paid from
 30 partnership profits, see Neuman Employment Contract (dkt. 10-2) at 109 of 162.

1 not "clearly appear." See Howard v. Cnty. of Amador, 220 Cal. App. 3d 962, 977 (Ct. App.
 2 1990). The LLP's argument ignores the provision in the Basic Documents stating that the
 3 "Exclusive Basis for [Shareholder] Compensation" is variable, not fixed, compensation, and
 4 that no amendment to that employment arrangement is permitted unless the amendment is
 5 made to all the firm's shareholder employment agreements. See Employment Agreement
 6 (dkt. 10-2) at 62 of 162. The LLP does not assert here that every shareholder was moved to a
 7 fixed-income arrangement at the same time as Neuman, and the Court concludes that the
 8 parties "clearly appear" to have adopted a new agreement that cannot be reconciled with the
 9 Basic Documents. Howard, 220 Cal. App. 3d at 977 (Ct. App. 1990). The Bankruptcy Court
 10 thus properly concluded that Neuman was a salaried employee, not a shareholder.

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12 **B. Whether the LLP's Dissolution Prevented Neuman from Fulfilling His**
Obligations under the 2007 Employment Agreement

13 The LLP argues that the firm's dissolution prevented Neuman from fulfilling his
 14 obligations under the 2007 employment contract.⁵ The Court disagrees. Neuman's contract
 15 covered a term of fours years, requiring him to bill at least 1,550 hours and work a total of
 16 2,400 hours in each of those years to receive his fixed compensation. See Neuman
 17 Employment Contract (dkt. 10-2) at 109 of 162. The LLP asserts that the firm's dissolution
 18 kept Neuman from satisfying his hours requirements during two of the four years covered by
 19 his contract. Appellant Br. (dkt. 10) at 20–22. The LLP filed a voluntary bankruptcy petition
 20 in 2008, see Stipulated Facts ¶ 54, and the LLP contends that Neuman should not be
 21 compensated for 2009 or 2010 because he could not meet his hours requirements after the
 22 firm ceased its operations in 2008. See Appellant Br. (dkt. 10) at 20–22.

23 California law defeats the LLP's argument that Neuman failed to fulfill his contract
 24 obligations given that the firm voluntarily filed a bankruptcy petition and prevented him from
 25 continuing to meet his hours requirements. It is well established that "where an employer

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27 ⁵ The LLP further argues that because the firm (1) suspended shareholder compensation and (2)
 28 terminated its shareholders as part of the dissolution process, Neuman is not entitled to the compensation
 he claims. See Appellant Br. (dkt. 10) at 20. This argument fails because Neuman was not a
 shareholder at the time of the firm's dissolution, as discussed in the foregoing section. The LLP's
 argument that Neuman was not entitled to additional compensation because shareholders are only
 compensated from the firm's net profits, see id., fails for the same reason.

1 puts out of his power the further performance of an employment contract by selling his entire
2 business it operates as a discharge of his employee engaged in such business." Gaspar v.
3 United Milk Producers, 62 Cal. App. 2d 546, 553 (Ct. App. 1944); accord O. Miller
4 Associates v. Gca Corp., 69 Cal. App. 3d 966, 972 (Ct. App. 1977).

Even where an employee's contract is subject to satisfactory performance—here review by the Compensation Committee and an hours requirement—"where the evidence shows no bona fide dissatisfaction, and the discharge is for other reasons, the employee can recover." See 1 Witkin on Contracts § 785 (10th ed. 2005) (citing Seifert v. Arnold Bros., 138 Cal. App. 324, 326 (Ct. App. 1934)). The LLP has made no showing that Neuman's performance was unsatisfactory prior to its dissolution in 2008, and thus the Court concludes that the dissolution did not prevent Neuman from satisfying his obligations under the four-year 2007 employment agreement. See Seifert 138 Cal. App. at 326.

C. Whether Neuman's Claim was Subordinated by the Plans of Dissolution and Liquidation

15 The LLP argues that the Plans of Dissolution and Liquidation adopted by the firm
16 subordinated claims by shareholders and former shareholders, including Neuman. See
17 Appellant Br. (dkt. 10) at 22. According to the LLP, given that a "reorganization plan
18 resembles a consent decree and therefore, should be construed basically as a contract," the
19 plans here bar Neuman's claim. See Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n, 997
20 F.2d 581, 588 (9th Cir. 1993). The Court concludes that the Bankruptcy Court properly
21 determined Neuman's claim was not subordinated. See Oral Ruling at 292 of 295.

22 The Plan of Dissolution provided that “[t]here will be no return of capital to any
23 Shareholder, recently departed Shareholder, or former or retired Shareholder and no payment
24 of any kind made to former and/or retired Shareholders” until “all of the legal obligations of
25 the Firm-in-Dissolution to third party creditors are satisfied, except if permitted by the Firm’s
26 senior secured lenders,” with the exception that “Shareholders may pursue claims for
27 compensation for services rendered prior to their departure or other expenses or contractual
28 rights arising from or related to their employment.” See Plan of Dissolution (dkt. 10-3) at 43
of 65. Similarly, the Plan of Liquidation expressly incorporates the language from the Plan

1 of Dissolution stating that there “will be no return of capital” to former Shareholders,
2 although “Shareholders may pursue claims” based on “contractual rights arising from or
3 related to their employment.” See Plan of Liquidation (dkt. 10-3) at 50 of 65.

4 Here, Neuman’s claim does not involve the return of capital; he argues that he is
5 entitled to compensation under an employment contract. See Bankruptcy Ct. Order (dkt. 1-
6 3) at 1 of 3.⁶ The disputed portions of the Plans of Dissolution and Liquidation allow former
7 shareholders to pursue claims—like the claim here—“based on “contractual rights arising
8 from or related to their employment.” See Plan of Dissolution (dkt. 10-3) at 43 of 65; Plan of
9 Liquidation (dkt. 10-3) at 50 of 65. The Bankruptcy Court thus properly determined that
10 Neuman’s claim is not subordinated by the Plans of Dissolution and Liquidation. See Oral
11 Ruling at 292 of 295.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Court AFFIRMS the Bankruptcy Court’s order
14 allowing Neuman’s claim.

16 **IT IS SO ORDERED.**

18 Dated: September 30, 2015

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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE



⁶ Neuman acknowledges that there is no likelihood that his former capital reserve balance of \$431,704 will be returned. See Stipulated Facts ¶ 46.